

**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

September 24, 2010

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:02 p.m. in the Council Chambers, 200 East Main Street, September 24, 2010.

Members present were Chairman Louis Stout, James Griggs, Jan Meyer, Kathryn Moore, Noel White and Thomas Glover. Member Barry Stumbo was absent. Others present were Jim Hume, George Dillon and Mark Newberg of the Division of Building Inspection; Chuck Saylor of the Division of Engineering; Jim Gallimore of the Division of Traffic Engineering; Captain Charles Bowen of the Division of Fire & Emergency Services and Rochelle Boland of the Law Department. Staff members in attendance were Jim Marx, Bill Saltee and Wanda Howard.

Swearing of Witnesses – Chairman Stout asked everyone wishing to testify at this meeting to stand at this time. He administered the oath to those in attendance.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the January 29, May 21 and August 27, 2010 meetings would be considered at this time.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs and carried unanimously (Stumbo absent) to approve the minutes for the January 29, May 21 and August 27, 2010 meetings.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **V-2010-72: JAMES BAILEY** - appeals for a variance to reduce the required side yard from 6 feet to 3 feet in order to construct a 2-story duplex in a Two Family Residential (R-2) zone, on property located at 732 Whitney Avenue (Council District 2).

The Staff Recommended: Disapproval of a 6' to 3' side yard variance for construction of a duplex, for the following reasons:

- a. As currently requested, granting such a variance could adversely affect the public health, safety and welfare, as the slope of the lot, sufficient to require the installation of a retaining wall, is not conducive to reasonably constructing a four-space off-street parking lot with very tight maneuvering conditions. Also, the specific parking lot design proposed by the appellant will require that vehicles back onto the public street to exit the property, which is contrary to the provisions of Article 16-2(a) of the Zoning Ordinance.
- b. There are no special circumstances pertaining to the subject property or the general vicinity that support a side yard reduction specifically for construction of a duplex. The historical use of the property has been single family residential. An intensification of the use, from single family to a duplex, mandates a potentially disturbing level of site improvement and associated water drainage given the existing down-slope to the adjoining property.
- c. Strict application of the Zoning Ordinance will not unreasonably restrict use of the subject property or create an unnecessary hardship for the appellant. The lot is currently vacant, and a single family residential use could be reestablished in lieu of a duplex, or a smaller duplex might be constructed without the need for any variances.

The Staff Recommended: Approval of a 6' to 3' side yard variance (along the northerly side property line) for construction of a single family residence, for the following reasons:

- a. Granting such a variance will allow a new residence to be constructed in the same location as the previously existing residence that was demolished a short time ago along with a detached accessory building, which should not in any way pose a threat to the public health, safety or welfare, nor alter the character of the general vicinity.
- b. The narrow width of the lot (40') and the location of the former dwelling are special circumstances that contribute to justifying a reduction in the side yard requirement on at least one side of the lot.

- c. Strict application of the Zoning Ordinance would unreasonably restrict the ability of the appellant to construct a reasonably sized home, while at the same time leaving sufficient room to provide off-street parking to the rear or side of any newly constructed residence, which is customary in this neighborhood.
- d. The appellant has been working diligently to redevelop the subject property in a manner that minimizes the number and extent of any variances that are required. Maintaining the same historical side yard setback as now requested, for such a narrow lot, and for the same land use, should not be viewed as an effort to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

- 1. The side yard variance is granted only for construction of a single family residence, and any such construction shall be done in accordance with a revised site plan submitted to the Division of Building Inspection clearly showing the following: (a) the construction of a single family residence with a side yard of at least 3' to be provided along the northerly side property line; (b) full compliance with other yard requirements (front, rear, and the other side yard); (c) no more than two off-street parking spaces; and (d) any driveway (minimum width of 9') set back at least 18" from the portion of the southerly side property line where the adjoining residence has a 0' side yard setback.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. Larry Morton was present on behalf of the appellant. Mr. Marx stated that Mr. Morton would like to postpone this request for one month, to the Board's October meeting. Chairman Stout asked Mr. Morton what he intended to accomplish by postponing this case so many times. Mr. Morton replied that the staff had identified a grading problem with this property, and he hoped to build a duplex, or in the alternative, a single family home on this lot.

Action – A motion was made by Mr. Griggs, seconded by Ms. White, and carried unanimously (Stumbo absent) to postpone **V-2010-72: JAMES BAILEY** to the Board's October meeting.

Mr. Stout commented to Mr. Morton that he did not believe that a duplex would work on that piece of property.

- b. **C-2010-88: TRILOGY HEALTH SERVICES, LLC** - appeals for a conditional use permit to construct and occupy an assisted living facility in a Planned Neighborhood Residential (R-3) zone, on property located on a portion of 2599 Old Rosebud Road (Council District 6).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Immediately bordering property is currently vacant, with some type of residential use anticipated at some time in the future. With the recommended 15' wide landscape buffer along the property perimeter, the specialized residential facilities that are proposed should be compatible with whatever type of residential use is developed on the immediately adjoining property. Assisted living facilities do not generate high levels of traffic, and the activities at such a facility are not inherently noisy or otherwise disturbing, an important consideration given the location of the existing West Wynd subdivision.
- b. All necessary public facilities and services are or will be available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

- 1. The assisted living and Alzheimer care facilities shall be constructed in accordance with the submitted application, and a revised site plan as amended to be consistent with a Final Development Plan approved by the Planning Commission.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction and prior to occupying the facilities.
- 3. The parking lots shall be paved, with spaces delineated, and landscaped in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
- 4. The final design of the access point, traffic aisles and layout of the parking spaces shall be subject to review and approval by the Division of Traffic Engineering.
- 5. Any outdoor pole lighting for the parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining or nearby properties.
- 6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
- 7. Old Rosebud Road shall be extended to the west end of the subject property, in accordance with the design and other requirements reflected on a Final Development Plan for the subject property approved by the Planning Commission. This extension shall be completed prior to the issuance of an occupancy permit from the Division of Building Inspection.

8. A 15' wide landscape buffer shall be provided around the full perimeter of the subject property (excepting the street frontage), to include (on the average) one tree for every 40' of linear boundary, recognizing that trees may be staggered rather than formally aligned. The buffer shall also include a minimum of fourteen perimeter landscaping areas, each with a minimum size of 120 square feet and planted with a mixture of shrubs and small species trees. These islands shall be located and otherwise designed to complement or be coincident with any screening required for the vehicular use areas, and shall be generally distributed as follows: five along the west side of the property; five along the rear property line; and four along the east side of the property. The overall design of the landscaping plan for this 15' wide perimeter buffer, including a description of species of plants to be used, shall be subject to review and approval by the Landscape Examiner with the Division of Building Inspection.
9. Action of the Board shall be noted on the Final Development Plan for the subject property.

Request for Postponement – Mr. Bruce Simpson, attorney, was present representing the Hamburg Homeowners Association, and stated that they are not the applicant. They are also not disputing the notice that was mailed to property owners within 400' of this site, but he said that the majority of their association, which would be a neighbor to this facility, was not located within the notice area. As is typical with neighborhoods, there is an evolving appreciation in learning more about this application. He said that a few days earlier, about 35 members met to discuss this proposal. The following morning, he received a phone call from the association; but due to scheduling conflicts, he was not able to meet with those residents until late yesterday afternoon. He did meet with them then, and thereafter called Mr. Hoskins, the attorney for the appellant, and indicated that there was great uncertainty about the details of this proposed use.

Mr. Simpson said that, historically, when an applicant proposed a new use in a new neighborhood, the applicant would meet with a neighborhood in advance of the Board's meeting to introduce the new activity that was proposed. Such a meeting had not been held with the West Wynd and Shetlands neighborhoods. As a result, there was much uncertainty and confusion on the part of residents about this proposal. As a result, the neighbors would have to attend this meeting, learn about the proposal for the first time, and then react immediately to the information that would be presented by the appellant. Therefore, Mr. Simpson requested a 30-day postponement of this case due to the lack of information obtained by the neighbors about this proposed facility. He said that the Board usually requested that, if there was to be a dispute, the parties involved be well informed about the proposal. He did not believe that the postponement would result in a hardship to the appellant.

Chairman Stout asked if Mr. Simpson and Mr. Hoskins could iron out their differences in the hallway before the Board considered this matter later in the day. Mr. Simpson replied in the negative, noting that he now represents over 360 residences in this neighborhood. He proposed a neighborhood meeting to squelch a lot of the uncertainty, and asked the staff attend to explain the process for a conditional use permit and the development approved in this area. He also suggested that Trilogy Health Services representatives also attend to answer questions from the neighbors.

Chairman Stout asked if the neighbors felt that they had not been notified about this proposal. Mr. Simpson replied that the people within 400' of this site were notified, but this did not include the vast majority of the residents of this neighborhood association. He felt that there were a lot of neighbors that were not notified of this application, but were concerned about traffic circulation and other impacts from this proposed use. He noted that the submitted site plan was recently revised by the appellant, and that the neighbors had not reviewed the Staff Report until he had forwarded it to them yesterday.

Objection – Mr. Glen Hoskins, attorney for the appellant, was present to object to the request for postponement. He said that he had hoped that the Board would keep this item on today's docket. He said that they had complied with all of the required notification requirements and, until this morning, they had not heard of any interest in a postponement of this case. Mr. Hoskins said that a representative from Trilogy Health Services had traveled from Louisville to participate in today's hearing, and that they were prepared to present their application. He felt that most of the questions that the neighborhood association had would be answered by their presentation to the Board. He felt confident that they would conclude that this would be a desirable use in their neighborhood.

Discussion – Chairman Stout asked the staff about the notification for this application. Mr. Marx replied that 95 letters were mailed to area property owners about this request, all within 400' of the site. He said that he wasn't sure how many neighborhood associations were mailed a notice, but that the staff had received several letters requesting a postponement of this hearing.

Note: At this time, Chairman Stout asked if the Board could consider other requests for postponement. Following the withdrawal of **V-2010-91: MARTY and LEE-ANNE VAUGHN**, and discussion of another request for postponement for

**C-2010-83: BLUEGRASS MOJO, LLC**, the Chair returned to this item.

Mr. Sallee distributed the letters requesting postponement of this application to the Board at this time.

Mr. Hoskins stated that his client had received an inquiry from a nearby resident, Mr. Larry Cutter, and that over the past two weeks, there was an exchange of e-mails back and forth about their application and plans for this facility. He said that their responses were evidence that the applicant had tried to address all questions that had been put to them.

Note: At this time, Chairman Stout asked the Board to consider "no discussion" items listed on the agenda. Following the Board's consideration of **V-2010-62: BETTER BUSINESS BUREAU OF CENTRAL KENTUCKY**, the Chair returned to this request.

Mr. Griggs asked about the notification mailed to the area's neighborhood association. Mr. Marx replied that, according to the Division of Planning's records, there is no organized neighborhood association in this area. As such, there was no such letter sent. He said that he did receive a call from a nearby neighborhood association representative shortly after the 95 letters were mailed.

Mr. Simpson stated that the Shetlands and West Wynd subdivisions had formed an organized neighborhood association, but was unsure as to whether or not they had registered their contact information with the Division of Planning staff. He stated that half of the neighbors that did receive notice live in the townhouse and condominium area nearby, and are not members of this neighborhood association. Mr. Hoskins said that there were a dozen or more homes that were within the 400' notification area, and were mailed notice letters for this appeal.

Ms. Moore said that it appeared to her that the notice was properly prepared and mailed. She asked the staff if there was any downside, other than the appellant's travel from Louisville, for a postponement of this request. Mr. Sallee replied that the staff rarely objects to a request for a postponement, but that more often it was up to the pleasure of the Board whether to proceed or postpone consideration of the appeal.

Mr. Hoskins said that they were opposed to the request for postponement because they had prepared for today's hearing and they are at the time of the year where work needs to be done before the winter snows arrive. He said that they believe that if the neighbors would hear their presentation, that they would be supportive of their request. He asked the Board to consider hearing their presentation this afternoon, and repeated that they were ready to proceed.

Mr. Glover stated that this was his first meeting as a Board member, adding that since Mr. Hoskins was his law partner, he was recusing himself from voting on this request for postponement, even though it was only a procedural matter.

Ms. White said that she also may need to recuse from voting on this request, and asked who was to be the builder of this facility. Mr. Hoskins replied that it would be the successful bidder hired by Trilogy Health Services as their contractor.

Mr. Griggs said that he felt that the Board should proceed with this item today, and that all concerns could be considered.

Mr. Simpson replied that the history of the Board was that many applicants extend a courtesy to nearby neighbors to let them know about these types of proposals, ahead of a public hearing. The expectation that a neighborhood must respond "on the spur of the moment" to a request like this was a rather chaotic way for the community to properly respond to proposed land use changes. He thought that the better way was for the neighborhood to host a meeting with an applicant to learn about a proposal in advance of a public hearing. He had hoped for an opportunity to be fairly heard next month.

Ms. Meyer thought that Trilogy could become a good neighbor by attending a neighborhood meeting and explaining their application to the residents. She thought that it was obvious, from Mr. Simpson's statements, that there is some information lacking from the appellant to the neighborhood. In starting from scratch at this location, she thought that it would be a good policy move on their part to hold the meeting.

Action – A motion was made by Ms. Meyer, seconded by Ms. Moore to postpone **C-2010-88: TRILOGY HEALTH SERVICES, LLC** for one month to the Board's October meeting.

The votes on the motion were as follows:

Ayes: Meyer, Moore, Stout

Nays: Griggs

Absent: Stumbo

Abstained: Glover, White

The Chair announced that the motion carried.

- c. **V-2010-91: MARTY and LEE-ANNE VAUGHN** - appeal for a variance to reduce the required 100-foot setback from a residential zone to 0 feet in order to construct a dog daycare and boarding facility in a Light Industrial (I-1) zone, on property located at 2156 Young Drive (Council District 5).

The Staff Recommended: Disapproval, for the following reasons:

- a. Granting the requested variance will adversely affect the public health, safety and welfare by introducing a potentially disturbing use in very close proximity to established residential areas to the side and rear of the proposed facility. Reasonable assurance has not been provided that noise and odor associated with the boarding and daily care (indoor and outdoor) of up to 100 dogs at this location can be managed effectively with a 0' setback from those residential properties.
- b. Special circumstances relating to the property have not been identified that would serve to justify the proposed reduction in the required 100' setback all the way to 0'. Physical characteristics of the property and extent of the bordering residential zones support that a 100' setback should be maintained for the proposed use of the subject property.
- c. Strict application of the 100' setback required by the Zoning Ordinance is appropriate in this particular case, as the subject property is bordered by established residential uses, in contrast to the subject property which has historically been used for a much different purpose (warehousing) than what is proposed (boarding and daily care of dogs).
- d. Failure to obtain the requested variance will not unreasonably restrict the use of the subject property or create an unnecessary hardship for the appellants, as they do not own or currently lease the property, and have the opportunity to find a more suitable site for the proposed use at another location.

Representation – Ms. Lee-Anne Vaughn was present, and requested a 30-day postponement of this request. She said that they were going to consider changes to their application to make it more palatable.

Chairman Stout noted that the staff had recommended disapproval of this appeal, and not postponement. Mr. Marx replied that he wasn't sure how feasible it would be to revise the use of the outdoor space to eliminate the need for the variance, or to significantly reduce the extent of the variance. He thought that there may also be objectors present to discuss this possible postponement with the Board. Chairman Stout asked how many in the audience were present to object to this application, and several individuals stood—some of which moved to the podium to speak to the request for postponement.

Chairman Stout said that he did not believe, given the number of objectors present, that this case should be postponed. Ms. Vaughn asked if she could withdraw their request at this time. Chairman Stout asked if that was her intention. Ms. Vaughn replied that it was, indeed.

Action – A motion was made by Ms. Meyer, seconded by Ms. White and carried unanimously (Stumbo absent) to accept Ms. Vaughn's request for withdrawal of **V-2010-91: MARTY and LEE-ANNE VAUGHN**.

- d. **C-2010-83: BLUEGRASS MOJO, LLC** - appeals for a conditional use permit to provide live music as part of a restaurant operation in a Neighborhood Business (B-1) zone, on property located at 286 Southland Drive (Council District 10).

The Staff Recommended: Approval (for individual performers), for the following reasons:

- a. Granting a conditional use permit (restricted to individual performers) should not adversely affect the subject or surrounding properties. The provision of such live music should not be disturbing to any of the surrounding commercial uses; and the nearest residential properties are over 200' away, on the opposite side of an elevated railroad bed (to the west) and on the opposite side of Southland Drive (to the north).
- b. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Live music may be provided by individual performers that use either no or very limited amplification, such as typically used for an acoustical guitar.
2. The approval of this use is subject to the provision of an amended site plan that demonstrates compliance with off-street parking requirements. Seating at the restaurant may be adjusted accordingly, to accommodate less than 140 persons if necessary, in order to comply with Article 8-16(n) of the Zoning Ordinance.
3. An occupancy permit shall be obtained from the Division of Building Inspection prior to providing live music at this location, subject to verification that minimum off-street parking requirements will be satisfied.
4. Live music may be provided from 8:00 PM until midnight.
5. Live music shall be confined to the stage area depicted on the submitted site plan (NW corner of building), and shall not be provided (either in person or via speakers) at the outdoor patio.
6. The building shall be soundproofed to the maximum extent feasible using existing technology, in accordance with the requirements of the Division of Building Inspection.
7. All exterior doors shall remain closed (except for ingress/egress) when music is being provided.
8. The establishment shall be operated at all times in a manner that does not result in noise or other emissions creating a disturbance to the surrounding neighborhood.
9. This conditional use shall be considered null and void should the appellant cease to either own or occupy the subject property.

Representation – Mr. Steve Atkins requested a postponement of their application for one month. They had learned earlier today of opposition to their request for live entertainment by a nearby neighborhood. He said that they hoped for a postponement to establish a relationship with the neighborhood in order to explain their request. They hoped to come to terms with their objections, or possibly mitigate any neighborhood concerns about their request. He said that their proposal for parking is also an item they would like to refine in the coming weeks.

Ms. Moore asked if the appellants had traveled from out of town for this hearing. Mr. Atkins replied that he and his business partner reside in Lexington.

Mr. Griggs asked if the appellant could converse with the neighbors out in the hallway so that the hearing could be conducted today. Mr. Atkins stated that Councilmember Doug Martin had conversed with someone familiar with the case who had informed him that there were letters of opposition to their application. He wasn't sure if these objections were from the entire neighborhood association, or just from a few residents in the nearby association.

Chairman Stout asked if there were any citizens present to object to this request. A few citizens stood at this time. Chairman Stout suggested that they converse with the objectors to see if they could work out their differences.

Note: Following the Board's action on **C-2010-89: ELIZABETH H. PLAYFORTH** (below), the Chair directed that the Board return to consideration of this case.

Representation – Mr. Steve Atkins and Mr. Cameron Morgan were present for this appeal. Mr. Atkins stated that he and Mr. Morgan were partners in this LLC.

Chairman Stout asked Mr. Atkins if the nine conditions were agreeable to them. Mr. Atkins replied that the nine conditions were the reason for their earlier request for a postponement of this application. Specifically, Mr. Atkins said that condition #1 was of concern to him and Mr. Morgan. He said that they had hoped to have 1-7 musicians performing at this location at any one time. They anticipated that Bluegrass, jazz, and gospel music would be provided by the musicians in their restaurant. Their Councilmember had mentioned to them that there was opposition to their request, and they used the break to discuss their proposal with Ms. Donnelly and Mr. Miller, who were two of the concerned neighbors they met with (at the meeting) earlier. He felt that the neighbors were unsure of their intent regarding the musical performances, and of their willingness to mitigate any potential noise disturbances.

Mr. Atkins said that the neighborhood association was under the false impression that the music would be performed outdoors. Their submitted site plan indicated a stage inside the building, but the reduced size of the drawing mailed to the neighbors was misinterpreted. Mr. Atkins indicated that after speaking with Ms. Donnelly and Mr. Miller, he could understand how the neighbors came to believe the music would be performed outdoors.

Mr. Atkins said that they had no objection to the other eight conditions recommended by the staff, with the

possible limitation on the hours in which music could be performed. He said that the objectors do not represent the neighborhood association, but they had indicated during the break that the appellants' answers to their questions had quelled their prior objections.

Chairman Stout asked the appellants if they realized that this type of application had been considered by the Board previously. He suggested that they not add to prior problems that had been experienced on Southland Drive. Chairman Stout opined that the other entertainment venues on Southland Drive would be jealous to learn that this establishment might be permitted to hold live entertainment at a later hour than approved for others in the area. Mr. Atkins thought that they could make due with the midnight limit proposed by the staff, if necessary.

Mr. Glover asked if this was to be a seven night a week musical venue. Mr. Atkins replied that they did anticipate their business would be open seven days and nights per week. He said that, starting out, they planned to have live music on Friday and Saturday nights. As their patronage increased, they hoped to add more musical performances on Tuesday through Thursday. He said that they requested live entertainment be approved for seven days in their application, in anticipation of a successful business and growing patronage.

Chairman Stout asked if the area business owners were aware of their plans. He said that he was surprised that all of Southland Drive was not present to object to this appeal. Mr. Atkins said that he did not anticipate that businesses in the area would object to their request, as there would not be much amplification of their musical performances.

Mr. Glover asked if this was the former location of Trump's. Mr. Atkins replied affirmatively. Mr. Glover asked how long ago it had been since Trump's closed at this location. Mr. Atkins replied that it had been closed for about three years.

Mr. Marx stated that the letters of objection received and circulated may not have been from the two residents with whom Mr. Atkins had spoken earlier in the day.

Ms. Moore asked if Mr. Atkins was willing to postpone this request in the hopes of obtaining revised conditions for this proposed use. Mr. Atkins replied affirmatively.

Action – A motion was made by Ms. Moore to postpone **C-2010-83: BLUEGRASS MOJO, LLC** to the Board's October meeting.

Discussion of Motion – Mr. Griggs asked if the residents of the notification area were informed that only single musicians would be performing at this location. Mr. Marx said that he would check the letter mailed, but that he did not believe the notice letter specified the number of performers at this location.

Mr. Griggs asked if the only disagreement left was about the hours of operation and the number of performers for the live entertainment. Mr. Hume replied that a six-month review should be required for this business, which has worked well for other similar uses throughout the community.

Mr. Glover asked the appellants if they asked for a postponement, in part, out of concern that their request would be denied by the Board. Mr. Atkins replied that they would rather have a postponement than a denial, and a mandatory waiting period before they could re-apply for this conditional use. He added that they had discussed with Mr. Miller and Councilmember Lawless their willingness to attend the meeting of the nearby Goodrich Neighborhood Association the following Thursday evening in order to discuss their proposal with those concerned, and to explain their intentions. They were very willing to discuss their plans with the association.

Mr. Marx said that it would benefit the staff to learn of any items agreed to by the appellants and the neighborhood association prior to next month's meeting.

Amendment to Motion – Ms. Moore amended her motion to grant a 30-day continuance (rather than a postponement) of **C-2010-83: BLUEGRASS MOJO, LLC** to the Board's October meeting.

Ms. Meyer seconded the motion.

Discussion of Motion – Ms Diane Lawless, 3<sup>rd</sup> District Councilmember said that she had received a number of phone calls from area residents about this application. She informed the Board that the notice letter did inform neighbors of the appellants' intentions to have up to seven persons performing music at

any one time. She said that the neighbors thought that the music would be performed outdoors, with the music audible from the homes on Goodrich Avenue. She now understood the appellants' intention was to only have music performed indoors. She said that Southland Drive and Goodrich Avenue are wonderful streets; however, the prior establishment (Trump's) was not a good neighbor. She suggested that the Board place a condition on the use requiring communication with the neighborhood. She said that the biggest fear of outdoor music at this location was no longer a worry for the neighborhood.

Chairman Stout said that the staff had recommended approval of this use, and that the appellant had requested a postponement. Ms. Meyer thought that it made a lot of sense for the appellants to go to the upcoming meeting and show how they are going to be good neighbors to the nearby residents.

The motion passed unanimously (Stumbo absent).

Mr. Atkins thanked the Board for their consideration of their request.

2. No Discussion Items - The Chair will ask if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

- a. **V-2010-62: BETTER BUSINESS BUREAU OF CENTRAL KENTUCKY** - appeals for a variance to reduce the required rear yard from 25' to 0' in order to retain a building addition in a Professional Office (P-1) zone, on property located at 1460 Newtown Pike (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor significantly alter the character of the general vicinity. The glassed enclosure is only visible from the golf course, where there is a heavily landscaped 25' buffer between the rear property line and the improved part of the course.
- b. The patio that existed prior to erection of the enclosure, in conjunction with the construction of the office building prior to development of the adjacent golf course, create a unique circumstance and contribute to justifying a reduction along this property boundary.
- c. Strict application of the Zoning Ordinance would require that the addition be removed entirely, which would result in an unnecessary hardship to the occupants of the office building, with little or no benefit to the recreational use of the adjoining property.
- d. The circumstances surrounding this variance request have resulted, at least in part, from the original location of the office building so close to the property line. However, a good faith effort is now being made to rectify a problem that has gone unnoticed for several years.

This recommendation of approval is made subject to the following conditions:

1. The enclosure may remain in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. A building permit shall be obtained from the Division of Building Inspection within 30 days following action by the Board.
3. Action of the Board shall be noted on an amended Final Development Plan for the subject property.
4. The variance is granted only for the purpose of allowing the enclosure to remain as constructed.

Representation – Mr. Mike Meuser, attorney, was present on behalf of the Better Business Bureau of Central Kentucky. He stated that the appellant had read the Staff Report, and was agreeable with all of the recommended conditions for approval.

Mr. Griggs asked about the rear yard encroachment that had occurred. Mr. Meuser replied that the BBB was in the process of reviewing the possibility of a new access point to Citation Boulevard, when the encroachment was discovered and the fact that no building permit had ever been obtained for it. The BBB then determined that it was best to "put this back in process" and obtain all of the required approvals. Mr. Griggs asked if there were any associated easement encroachments. Mr. Meuser replied that there were none, as there was a concrete patio that extended beyond the enclosure toward an existing easement. He stated that their surveyor, Mr. Roger Ladenberger, was present to address this concern, if necessary.

Mr. Griggs said that he was curious as to whether there is a history of adding on to this building without obtaining building permits. Mr. Meuser replied that it may appear that way because the same contractor was



used for the front and rear building additions. The Planning Commission considered the front enclosure at their meeting in August, and that it would probably end up being removed as there was an issue with the Fire Department. He said that the BBB used an approved contractor for both the front and rear additions, and they were surprised to learn that they did not obtain the proper permits. Mr. Griggs agreed with the irony, and asked if the appellant would be agreeable to an additional condition that the front fire hydrant/connection become legal. Mr. Meuser did not object, as he believed that it was also a condition of the prior development plan approval by the Planning Commission. Mr. Griggs stated that he thought he could support this request with the added condition.

Mr. Hume asked if the additional condition was meant to address the Fire Department connection near the front door to the building. Mr. Griggs replied affirmatively. Mr. Hume stated that its compliance would be a Building Code condition, regardless. Captain Bowen with the Division of Fire & Emergency Services responded that they had discussed this with the appellant, and that they had agreed to extend the hydrant connection outside of the building for proper Fire Department access. He said that they would also have a "sign-off" on the corollary development plan. Mr. Griggs said that the added condition was no longer necessary in his opinion, given these other requirements.

Action – A motion was made by Ms. Moore, seconded by Ms. Meyer, and carried unanimously (Stumbo absent) to approve **V-2010-62: BETTER BUSINESS BUREAU OF CENTRAL KENTUCKY** – an appeal for a variance to reduce the required rear yard from 25' to 0' in order to retain a building addition in a Professional Office (P-1) zone, on property located at 1460 Newtown Pike, for the reasons provided by the staff and subject to the four conditions recommended by the staff.

Note: The Chair returned to **C-2010-88: TRILOGY HEALTH SERVICES, LLC** at this time. Following the disposition of that case, the following case was considered by the Board.

- b. **V-2010-93: CLAY J. and SARAH MARIE LEAVELL** - appeal for a variance to reduce the required zone-to-zone landscape buffer from 15 feet to 0 feet in order to construct a loading dock in a Light Industrial (I-1) zone, on property located at 155 W. Tiverton Way (Council District 9).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The fundamental nature of the use where the loading dock is proposed will not change, and there is no aspect of the proposed building addition that needs to be buffered from the storage units on the adjoining property.
- b. The location of the existing building, current use of the area to the rear of the building as a paved access drive, and zone change initiated by the adjoining property owner, are all special circumstances that collectively justify the elimination of any required perimeter screening where the loading dock is proposed.
- c. Strict application of the requirements of the Zoning Ordinance would require that a perimeter landscape buffer of between 5' and 15' in width be provided between the property line and the proposed loading dock. Compliance with such a requirement would necessitate that the width of the loading dock be reduced by a minimum of 5', or that the building be shifted away from the property line. Neither option is warranted, based on all of the identified circumstances.
- d. The appellants are proposing a reasonable property improvement that is customary in a Light Industrial (I-1) zone, and that effort should not be interpreted as an attempt to circumvent a requirement of the Zoning Ordinance, since this buffer is not ordinarily required between two industrial buildings.

This recommendation of approval is made subject to the following conditions:

- 1. The loading dock shall be constructed in accordance with the submitted application and site plan.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. Jason Banks, Banks Engineering, was present representing Mr. & Mrs. Leavell. He said that they had reviewed the staff's comments, and that the appellants agree with the recommended conditions for approval.

Action – A motion was made by Ms. White, seconded by Mr. Griggs and carried unanimously (Stumbo absent) to approve **V-2010-93: CLAY J. and SARAH MARIE LEAVELL** – an appeal for a variance to reduce the required zone-to-zone landscape buffer from 15 feet to 0 feet in order to construct a loading dock in a Light Industrial (I-1) zone, on property located at 155 W. Tiverton Way, for the reasons provided by the staff, and with the conditions recommended by the staff.

- c. **C-2010-84: PATHWAY CHURCH** - appeals for a conditional use permit to place a storage building on the church property in a Single Family Residential (R-1C) zone, on property located at 2601 Clays Mill Road (Council District 10).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The construction and use of a small storage building by the church will not be disturbing to the neighborhood, and the site selected will not require the removal of any trees or any significant grading for construction.
- b. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The storage building shall be constructed and used in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction and/or placement of the storage building on the property.

Representation – Mr. Mike Currans was present representing Pathway Church, and stated that the appellant had reviewed the Staff Report, and the conditions for approval. Chairman Stout asked if the church would agree with the recommended conditions, and Mr. Currans replied in the affirmative.

Action – A motion was made by Ms. Meyer, seconded by Ms. White, and carried unanimously (Stumbo absent) to approve **C-2010-84: PATHWAY CHURCH** – an appeal for a conditional use permit to place a storage building on the church property in a Single Family Residential (R-1C) zone, on property located at 2601 Clays Mill Road, for the reasons provided by the staff and subject to the conditions recommended by the staff.

- d. **C-2010-85: S & M PAWN SHOP, INC.** - appeals for a conditional use permit to occupy an existing building as a pawn shop in a Highway Service Business (B-3) zone, on property located at 285 E. New Circle Road (Council District 6).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, provided that two access points (one off of East New Circle Road and one off of Bryan Station Road) at the street intersection are closed. Adequate off-street parking is available for this use (provided pawned vehicles are not parked on site), and the existing building can accommodate the proposed use without the need for any expansion. The subject property is surrounded on all sides by other commercial uses.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The pawnshop shall be established in accordance with the submitted application and a revised site plan indicating (a) the closure of the two access points closest to the street intersection, and (b) the provision of a continuous landscape buffer of at least 150' in length that wraps around the curved corner of the intersection.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction and/or renovation, and prior to opening the pawnshop.
3. The two access points closest to the intersection of Bryan Station Road and East New Circle Road shall be closed in accordance with the requirements of the Kentucky Transportation Cabinet.
4. A landscape buffer, as required for a vehicular use area pursuant to Article 18-3(a)(2)2 of the Zoning Ordinance, shall be provided for a minimum of 150' in length at the curved corner of the street intersection, subject to approval by the Landscape Examiner with the Division of Building Inspection. That buffer, to consist of tree and shrub plantings only and no fence or wall, shall include the area encompassed by the two access points that are to be closed.
5. Any pawned vehicles shall be stored off site at a location approved for such a use, subject to verification by the Division of Building Inspection.
6. This approval shall become null and void should the appellant no longer own or occupy this business on the subject property.

Representation – Mr. Michael Pettis, owner of S & M Pawnshop, was present for this appeal. Chairman Stout asked Mr. Pettis if he understood the staff's recommendation, including the six recommended conditions. Mr. Pettis replied in the affirmative.

Mr. Stout asked the staff if they had any comment on this request. Mr. Marx replied that there is currently "a lot going on" at this location and he needed to inform the Board about some of the more recent activity. Mr. Marx displayed an aerial photograph of the subject property, at the corner of New Circle and Bryan Station Roads. He focused the Board's attention on the two access points closest to the intersection, and said that the staff had recommended that those be closed. He praised the appellant's intent to comply with this condition, but stated that they had already begun to close those two access points. Mr. Marx said that this was to be done in accordance with the requirements of the Kentucky Transportation Cabinet, as both roads were State highways. However, the appellant had already had a concrete curb installed, but probably had not yet had time to consult with the District 7 office about this work.

Mr. Marx showed a second ground-level photo of several vehicles that were for sale in front of this building. Mr. Pettis replied that the truck shown in the photo was full of tools, and was parked there because work was ongoing inside the building. He said that the other car was owned by his father, but had been parked on this property for a few days. Another vehicle belonged to a friend, and Mr. Pettis said that he would ask his friend to remove the truck from the property. He said that it was not their intent to park vehicles on this property for sale. Mr. Marx said that the issue here was that the vehicles on this property had "For Sale" signs on them and that there is to be an "auto pawn" activity at this location; but due to the small size of the site, there is not enough room for these vehicles to be parked or stored at this location. Mr. Marx said that some clarification for this part of the use was in order. Mr. Pettis replied that the vehicles to be pawned would be parked on a property off Leestown Road, and that there would be no need to have those vehicles parked at this location.

Chairman Stout said that Mr. Pettis had not set a very good example by having the "For Sale" vehicles parked at this location. He also asked the staff why they would recommend the closure of the two access points without the prior approval of the Transportation Cabinet. Mr. Marx replied that this may be a fairly expensive proposition, given the landscaping that the staff was also recommending; and that this would be an unfair burden to place on the appellant, prior to knowing whether or not their conditional use would be approved by the Board. Mr. Marx then displayed a rendered site plan on the overhead projector, which illustrated the recommendation for interior landscaping where the existing landscape islands are located, and in place of the two access points to be closed.

Chairman Stout suggested to Mr. Pettis that it was unwise to have vehicles for sale on this site prior to the hearing. Mr. Pettis replied that only his friend's vehicle was for sale, and the other vehicles were not part of their business. Chairman Stout asked if Mr. Pettis had contacted the District 7 office about the closure of the access points. Mr. Pettis replied affirmatively, and said that they would require a permit to close the two access points as well as any for re-pavement. He said that his attorney had advised him that the concrete work could commence at this location.

Ms. Moore asked if the Board should add a condition requiring a review in six or nine months. She asked the staff if one of the concerns was that the use was already not complying with the recommended conditions. Mr. Marx replied affirmatively, but added that he understands that the appellant is anxious to open this business.

Chairman Stout asked if the staff had advised the appellant that the State's approval would be required, or whether they should just go on and close the access points. Mr. Marx replied that the Staff Report (mailed to the appellant) indicated that the closure would need to be coordinated with the State District 7 office.

Ms. Meyer asked if the closure would need to be accomplished before an Occupancy Permit could be granted. Mr. Newberg replied in the affirmative. Chairman Stout asked if the Division of Building Inspection had already inspected the property. Mr. Newberg replied that he had not visited the site, but was unsure as to whether or not anyone else from his office had inspected the property.

Ms. Moore suggested that a six-month review should be added to the list of conditions.

Mr. Marx stated that the landscaping should be at least 3' inside the right-of-way, once the access points are closed. He again displayed the rendered site plan on the overhead projector for the Board to review, which showed the required landscape buffer for the parking lot.

Chairman Stout recommended that Mr. Pettis review this information with the State District 7 office, and obtain the proper permits, rather than construct something first that might have to be torn out later. Mr. Pettis replied in the affirmative.

Mr. Glover asked if the landscape buffer shown complied with a controlling ordinance that might contain

additional requirements. Mr. Marx replied that the Zoning Ordinance does control the landscaping material needed at that location. Mr. Pettis replied that he had called the office to obtain additional details, but had not been successful. Chairman Stout suggested that he schedule an appointment with the local officials instead. Mr. Pettis replied that he had spoken with Mr. Marx earlier in the week. Chairman Stout suggested that he obtain the proper information early on, so that when he returned to the Board for a review, the Board would not have to insist that he remove other improvements, when they could be done properly the first time.

Chairman Stout said that there were now seven recommended conditions for this use, and he asked Mr. Pettis if he was agreeable with these conditions. Mr. Pettis replied in the affirmative.

Action – A motion was made by Mr. Griggs to approve **C-2010-85: S & M PAWN SHOP, INC.** – an appeal for a conditional use permit to occupy an existing building as a pawn shop in a Highway Service Business (B-3) zone, on property located at 285 E. New Circle Road, for the reasons provided by the staff, subject to the six conditions recommended by the staff, and adding a seventh condition requiring a six-month review by the Board after issuance of the Occupancy Permit.

Discussion of Motion – Mr. Marx said that this added condition may be acceptable, but there was quite a bit of work that would be necessary prior to the Occupancy Permit being issued. He thought that this was necessary, as well. Mr. Griggs said that he thought the appellant understood that. Mr. Pettis replied that he intended to do just that, and then obtain the Occupancy Permit. Mr. Griggs said that he was satisfied.

Ms. Moore thought that the condition should be that a review should occur six months from this date. In that way, if everything is in order, the Board's meeting on this matter could be very short. Chairman Stout asked Mr. Pettis if that would be agreeable with him. Mr. Pettis replied in the affirmative.

Amendment to Motion – Mr. Griggs said that he too, would be agreeable to amending his motion for approval to require the review from the Board to be six months from this date.

Ms. Meyer seconded the amended motion. The motion carried unanimously (Stumbo absent).

- e. **C-2010-87: AMY KELLY** - appeals for a conditional use permit to establish a home occupation (jewelry design) in a Single Family Residential (R-1E) zone, on property located at 1881 Millbank Road (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Noisy equipment or potentially hazardous material will not be used to produce custom jewelry. Parking issues or significant increases in traffic are not anticipated, as customers will not be coming to the appellant's home.
- b. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The home occupation shall be established in accordance with the submitted application and site plan, with the work activity to be confined to a single room of the home in an area not exceeding 150 square feet.
2. The activity shall at all times comply with the limitations for home occupations as outlined in Article 1-11 of the Zoning Ordinance.
3. A Certificate of Occupancy shall be obtained from the Division of Building Inspection prior to beginning the home occupation.
4. This approval shall become null and void should the appellant cease to either own or occupy the subject property.

Representation – Ms. Amy Kelly was present for her application. Chairman Brown asked if she had read the Staff Report and if she would agree to abide by the recommended conditions. Ms. Kelly replied affirmatively.

Action – A motion was made by Ms. Meyer, seconded by Ms. White, and carried unanimously (Stumbo absent) to approve **C-2010-87: AMY KELLY** – an appeal for a conditional use permit to establish a home occupation (jewelry design) in a Single Family Residential (R-1E) zone, on property located at 1881 Millbank Road, for the reasons provided by the staff, and subject to the four conditions recommended by the staff.

- f. **C-2010-89: ELIZABETH H. PLAYFORTH** - appeals for a conditional use permit to establish/operate a plant nursery in the Agricultural Rural (A-R) zone, on property located at 5645 Sulphur Well Road

(Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The property is well suited for the cultivation of trees and shrubs, and no structures or other physical improvements are proposed within the floodplain area that bisects the property. Any increase in traffic is anticipated to be very minimal, as the operation will be wholesale in nature.
- b. All necessary public facilities and services, such as fire and police protection, are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The nursery shall be established and operated in accordance with the submitted application and site plan.
2. All necessary permits, including an occupancy permit, shall be obtained from the Division of Building Inspection prior to establishing the plant nursery.
3. The nursery shall be operated and managed at all times in full compliance with Article 19 of the Zoning Ordinance pertaining to floodplain conservation and protection. In addition, any accessory structures and fencing associated with this plant nursery shall not be located in the FEMA designated floodplain.

Representation – The appellant was not present for this application, so Mr. Saltee offered to contact her by phone. Other cases were discussed by the Board in the interim.

Mr. Saltee later informed the Board that he had spoken with Ms. Playforth by phone, and that she was en route to the Board's meeting. The Board then proceeded to consider other cases on their agenda.

Note: At this time, the Board considered **V-2010-92: GATEWOOD ARNOLD** (below). After their vote on that case, the Chair directed that the Board return to consideration of this item.

Representation – Ms. Elizabeth Playforth, appellant, was present for her appeal at this time. She apologized for the delay in appearing at this hearing, as she had been at the horse sales at Keeneland, and did not realize the time of the day. She said that it was very difficult finding a parking space downtown, as well.

Chairman Stout asked if she had read the staff recommendation, and the three conditions recommended by the staff. Ms. Playforth replied in the affirmative. Chairman Stout asked her if she would agree to abide by the three conditions. Again, Ms. Playforth replied affirmatively.

There were no citizens present to comment on this appeal.

Action – A motion was made by Ms. White, seconded by Mr. Glover, and carried unanimously (Stumbo absent) to approve **C-2010-89: ELIZABETH H. PLAYFORTH** – an appeal for a conditional use permit to establish/operate a plant nursery in the Agricultural Rural (A-R) zone, on property located at 5645 Sulphur Well Road, for the reasons provided by the staff, and subject to the conditions recommended by the staff.

Note: Following the Board's action on this case, the Chair directed that the Board return to consideration of **C-2010-83: BLUEGRASS MOJO, LLC**.

- B. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of

- the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2010-92: GATEWOOD ARNOLD** - appeals for a variance to reduce the required front yard from 300 feet to 160 feet along Athens-Boonesboro Road, and from 300 feet to 240 feet along McCall's Mill Road in order to construct a single family residence in the Agricultural Rural (A-R) zone, on property located at 7256 Athens-Boonesboro Road (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of this rural area. Several nearby residences are located closer to Athens-Boonesboro Road and McCall's Mill Road than the proposed residence. The lot is heavily wooded, which will provide desirable buffering, and the site selected for construction is an open area at a high point on the property.
- b. The irregular shape of the lot, and the fact that it is subject to front yard limits for both Athens-Boonesboro Road and McCall's Mill Road, are special circumstances that contribute significantly to justifying the requested front yard reductions.
- c. Strict application of the Zoning Ordinance would force the appellant to construct a new residence very close to the easterly side property line, in an area that is heavily wooded and also very close to an existing residence on the adjoining property. As such, compliance in this particular situation would result in having to place the residence at a very undesirable location.
- d. The appellant is making a reasonable effort to site a new residence at a location that is sensitive to both privacy needs and environmental concerns, while still providing a substantial setback from two public roads. This effort should not be interpreted in any way as an attempt to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The residence shall be constructed in accordance with the submitted application and site plan. Variations in the building area for each of the three phases of construction are acceptable, provided that the total size does not exceed a building area of 8,500 square feet, and that building setbacks do not encroach upon the building lines indicated on the site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. Tony Barrett, landscape architect, and Mr. Gatewood Arnold, appellant, were present for this appeal. Chairman Stout suggested that, although the staff had recommended approval of this request, the Board should hear first from the objectors in this case, and then the appellant could respond to those concerns.

Objections – Ms. Dana Dennison, Athens-Boonesboro Road, was present to object to this appeal. She asked to read two letters into the record, and wished to address the report given to the Board by Environmental Planner Jim Rebmann, who was not present, but who had visited the site in the past few days.

Ms. Dennison asked to display the appellant's site map on the overhead projector. She said that this proposal would adversely affect the public health, safety and welfare, as the proposed building location is within 10' of a "wet sinkhole." It is visible from the nearby roadway, and is one of a cluster of sinkholes in this area. USGS & KGS maps identify this feature, and a new septic system could impair this karst area. The sinkhole in question is about ½ acre in size and that is significant. She thought that Mr. Arnold should consider the challenges in constructing such a large home on such a constrained site.

Ms. Dennison thought that wells could deplete the aquifer that supplies other wells in this area. She was also concerned about the rural character of this proposed home. She thought that the homes in this area were much more modest in size than the 8,200 square-foot home proposed. She said that the home would be within sight of the State scenic byways that have been designated in this area. She thought that the two variances were significant, one from each road, and there was hardly any room on this lot without them.

Ms. Dennison asked the Board to consider the environmental impacts to her adjoining property from this proposed construction.

Ms. Dennison also read a letter into the record from Ms. Melissa Brown, who is the President of the Boone's Creek Neighborhood Association. The BCNA recommended disapproval of this request to the Board. There is a registered, historic neighborhood in the rural area, and they were worried about the precedent for other variances, should this request be granted. The BCNA was also worried about the lack of enforcement in rural areas for past variances, and did not want to be responsible for its enforcement, should it be granted. They were also concerned about the possible environmental impacts associated with the large house proposed on this property. They wanted assurance that the existing trees on this property would not be cut down, and wondered why the appellant purchased this tract, since it is so wooded. The letter concluded by asking the Board to deny this request.

Ms. Dennison asked to display the site plan submitted by the appellant on the overhead projector. Once that was done, she identified the existing sinkhole on the property, and provided information about the slope of the land. She identified the location of her home on the adjoining parcel, and said that she had cracks in her foundation, which was an indication that the soils in this area were not stable.

Ms. Dennison then displayed a map of the Boggs Fork area from the Kentucky Geological Survey, which showed several sinkholes in the area of the subject site. She said that the sinkhole on the Arnold property was part of the karst system in this area. She also identified the community of Athens and Athens-Boonesboro Road on that map.

Ms. Dennison displayed another map of karst features for Fayette and Clark Counties on the overhead projector. It identified several faults and sinkholes in the vicinity of the subject site. This said that this was a US Geological Survey map from the year 2000. She felt it was harder to see, but it showed some mines in the vicinity of the site as well.

Ms. Dennison referred to the site evaluation report submitted to the Board by Mr. Jim Rebmman, the LFUCG Environmental Planner. She said that Mr. Rebmman was not a certified geologist but yet, he reported that there was not a "wet sinkhole" on the subject site. Such a sinkhole floods in heavy rains. She said that these sinkholes do flood when it rains, as she and many of her neighbors have seen this activity. She referred to a possible quarry on the site, noted by Mr. Rebmman, but that these are field stones, removed from the farm over the years. She did not believe that there was a stable building foundation for the proposed home on this site.

Ms. Dennison said that the other existing homes in this area were constructed without the need for a variance, before the law was changed (to increase the setbacks from the roads). She could only think of one variance granted in this area, and that was for a farm manager to construct his residence closer to the road, so that it could also function as a guard house. Her house was built in 1961, and it sits back 400' from the road. The remaining acreage is on the edge of a sinkhole.

Ms. Dennison said that she had discussed her objections to this home construction with Mr. Arnold, who understands that her concerns are not of a personal nature. She believed that this was a poor building site for environmental reasons and due to its impact on the rural nature of this area. She thanked the Board for allowing her to address these issues.

Appellant's Presentation – Mr. Barrett said that Mr. Arnold was in agreement with the conditions recommended by the staff, and asked that the Board approve their request.

As to Ms. Dennison's comments, Mr. Barrett said that they appreciate the information about the sinkhole, but they do not agree to its location as it had been described. He said that they had located the house on the property to fit into the opening of the tree line on the property. The area on this lot that would comply with the two required 300' setbacks was in the midst of the existing trees, and they specifically sited this house on the lot to avoid tree removal. He said that there is an existing driveway on the property that formerly accessed a barn, which Mr. Arnold had recently removed. The open area on this lot will also allow a yard area for outdoor recreation for the residents of this home.

Chairman Stout asked for their description of the sinkhole's location. Mr. Barrett replied that Mr. Rebmman had investigated the site, and that there did not appear to be a sinkhole located near the proposed home's location, and he submitted a copy of Mr. Rebmman's e-mail to the Board. He did believe, according to the USGS map he displayed on the overhead projector, that there was a sinkhole near their property.

Chairman Stout asked if they had asked anyone for help in determining the true location of the sinkhole. Mr. Arnold replied that he had discussed this issue with L. E. Gregg, a local geo-technical firm a couple of years

ago, but had not made any such inquiries recently. Chairman Stout asked if Mr. Arnold had discussed the features on the property with any past owners or residents of this parcel. Mr. Arnold replied that he had not.

Ms. Moore asked if the appellant did not agree with Ms. Dennison's assertion that there was a sinkhole in the proposed buildable area for the house. Mr. Barrett replied affirmatively, and said that their site was more than 150' away from the nearest closed contour. Ms. Moore asked for him to identify its location on their site plan, and Mr. Barrett did so for the Board.

Chairman Stout asked about the report of water ponding in the sinkhole. Mr. Arnold replied that their proposed building site was at a 50' higher elevation than the existing sinkhole, which was located closer to the road than their building site. Mr. Barrett then identified the drainage divide that exists on the site. Mr. Arnold added that the existing drainage swale that exists is located in the existing wooded area, which they are trying not to disturb. He said that they did not propose to change that existing topography. He thought that the 150' separation would be a sufficient setback of the house from the sinkhole.

Chairman Stout said that, while he was not opposed to this construction, he was concerned about the environmental concerns raised by the objector. He thought that the appellant should have fully investigated the site by this time. Mr. Arnold replied that he had been a home builder for 18 years, had thoroughly investigated this site, and had no concerns with it at all.

Mr. Glover asked about the geo-technical report from L. E. Gregg for this site. Mr. Arnold replied that there was no issue raised in the report that could be classified as a "problem." Mr. Glover asked if geo-technical opinions were requested from L. E. Gregg about the site. Mr. Arnold replied in the affirmative. Mr. Glover asked if they had provided any such opinions. Mr. Arnold replied that they had received those recommendations and opinions two years ago, and they thought that the site "was fine." Mr. Glover asked if L. E. Gregg put their opinions in writing to Mr. Arnold. Mr. Arnold replied in the affirmative. Mr. Glover asked about the contents of the report. Mr. Arnold responded that he did not bring a copy of the report to this public hearing, as he did not anticipate that it would be necessary to do so.

Mr. Griggs said that he is familiar with the site, and the home site seems to be the very best place to construct a house on the property. He said that the drainage will flow away from the site, and there will be ample room for the leach field to the south of the home, if there is any normal soil depth on that portion of the property. He thought that this would prevent pollution to the nearby waterways. Also, he said that the home would not be visible from either McCall's Mill Road nor from Athens-Boonesboro Road, as it would be nestled in the trees. It seemed to be the optimal location on the property for the new house, and that is where he would place the home if he owned this property.

Mr. Glover asked if the home site was the highest point of the property. Mr. Arnold replied that it was, indeed.

Ms. Meyer asked if it was their intent to keep this property as natural as possible. Mr. Arnold replied in the affirmative, and said that the wooded areas of the property were what appealed to him. He said that it was a beautiful piece of property.

Mr. Griggs asked if the water source to the property would be at risk due to blasting necessary for the foundation or a possible basement. Mr. Arnold replied that he planned to build this home in phases, and that he would move to the property as soon as possible. He would complete the entire house over time. He said that in the initial phase, a basement would be constructed. However, in future phases, a crawl space would be built beneath those additions. Mr. Griggs asked how deep the soil is at the home's planned location. Mr. Arnold replied that he had performed a "test dig" and estimated the soil's depth to be 5'-6' at that location. Mr. Griggs asked if the top few feet of rock could be removed without the benefit of blasting. Mr. Arnold responded that he planned just to begin his construction at that level, and build up from there.

Ms. Meyer asked about the planned water supply for the home. Mr. Arnold replied that he would like to drill a well, initially, but perhaps install a cistern with future phases of the home's construction, depending upon the functioning of the well. He had spoken with contractors that had drilled wells in this general area, and none indicated that they had encountered any problems. He was aware of Ms. Dennison's concerns and did not want to do anything to threaten her water supply. He said that he respected her knowledge and experience in this area of the county, and thought that they actually had more interests in common than had been expressed in the hearing.

Mr. Barrett showed a photograph on the overhead projector of the open area on the subject property where the home was planned to be built. He said that there is really only one area on the property where a new



home makes sense, and said that the sinkhole area was about 150' away (down the hill) from this clearing. He said that Mr. Arnold had constructed a play area for his children in the wooded portions of this property, and that the children had held scavenger hunts here as well. Mr. Arnold added that they had cleared a few trails in the trees on the property, and one was labeled as "mine shaft" in fun, but was not indicative of such a true feature.

Mr. Barrett showed a photo of a children's playhouse on the property and said that it illustrates the plan Mr. Arnold had for the property, and for his family. He said that Mr. Arnold looked forward to living on the property.

Action – A motion was made by Mr. Glover and seconded by Mr. Griggs to approve **V-2010-92: GATEWOOD ARNOLD** – an appeal for a variance to reduce the required front yard from 300 feet to 160 feet along Athens-Boonesboro Road, and from 300 feet to 240 feet along McCall's Mill Road in order to construct a single family residence in the Agricultural Rural (A-R) zone, on property located at 7256 Athens-Boonesboro Road, for the reasons provided by the staff, and subject to the conditions as listed on the Board's agenda.

The votes on the motion were as follows:

Ayes: Glover, Griggs, Moore, Stout, White

Absent: Stumbo

Abstained: Meyer

The Chair announced that the motion carried.

Note: Following the Board's action on this case, the Chair directed that the Board return to consideration of **C-2010-89: ELIZABETH H. PLAYFORTH**.

#### D. **Conditional Use Appeals**

1. **C-2010-86: SARAH and SEAN REILLY** - appeal for a conditional use permit for an indoor riding arena in the Agricultural Rural (A-R) zone, on property located at 1210 Bel Mar Lane (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The indoor riding and training arena will be centrally located on the property, in compliance with all applicable setback requirements. Noise and traffic disturbances are not anticipated due to the private nature of the horse training activities that will be taking place.
- b. All necessary public facilities and services are available and adequate for the proposed use, and sewage treatment and garbage pick-up will be handled privately.

This recommendation of approval is made subject to the following conditions:

1. The riding and training arena shall be built and operated in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
4. The indoor facility shall be used for private horse riding and training purposes only, with no public events such as riding shows.

Representation – Mr. Sean Reilly and Ms. Sarah Reilly were present for their appeal.

Chairman Stout suggested that that the objectors present their issues to the Board first.

Objections – Mr. William Lloyd was present to object to this request. He said that he had spoken with a number of his neighbors, and hoped to present all of their concerns to the Board.

Mr. Lloyd said that the first concern was about water runoff from the subject site. He said that there are already some large barns on the property, and another one would threaten the drainage flow in the area. The parking area addition proposed would also result in more storm water runoff. He said that water runoff is a significant problem to Bel Mar Lane and to Crawley Lane, which is just a county road.

Mr. Lloyd said that the barn on the Reillys' farm has a number of stables already, perhaps as many as 20, and this new arena would also have horses in it. He was not sure if there was a "horses per acre" restriction or requirement that would need to be met for this use. He said that since his property is downhill from this proposed arena, he wanted to know how and where they would dispose of the muck. He said that his neighbors in the Bel-Mar subdivision had concerns with traffic and parking that would result from this proposed use.

Mr. Lloyd said that the existing barn on the subject site had a residential apartment use conversion in the upstairs space, without the benefit of any permits being issued. He said that only one electrical permit had been issued for this barn, but no final permit was ever issued. He said that the Health Department had also not given its approval for the apartment unit on the farm, which was a concern to him. He wondered if another septic system would be required for this new use. The PVA office didn't list this apartment in their file for the 1210 Bel Mar Lane address. He showed a photo from their file on the overhead projector, and said that their office only considered the structure as a barn, and not as a residence or as a residential property. Another picture identified a second floor deck extending from the barn, presumably where the dwelling unit had been constructed.

Mr. Lloyd said that if there is to be additional runoff from a new rooftop, new parking areas, and hard surfaces, that he hoped that there would be consideration given to the properties downhill. He said that this is a wonderful residential area, and he was concerned about the storm water and what might be contained in it. He said that he had additional pictures of the properties, if the Board was inclined to view them.

Mr. Lloyd informed the Board that there are gullies in this field right now, and that he did not want to see them made any worse by this new construction. He said that during some heavy rains, the culvert under Crawley Lane had been full to the point that the storm water overflowed the pipe and covered the road. He hoped that the new tax on impervious surfaces would enable the LFUCG to repair and improve this situation. He thought that other neighbors had submitted letters of objection to this appeal. He said that his house was in the midst of a nice residential area, and he hoped it would remain that way.

Questions – Chairman Stout asked where Mr. Lloyd's house was located in relation to the subject site. Mr. Lloyd replied that it was adjacent to the subject property, and that only a fence separated the two properties. Mr. Marx displayed an aerial photograph to illustrate the location of the subject property, and Mr. Lloyd identified the drainage course from the subject property toward his property.

Chairman Stout asked if Mr. Lloyd could identify the former use of the subject property. Mr. Lloyd replied that that this was originally part of the Bel Mar horse farm, but then the owners subdivided the farm into numerous ten-acre tracts, and sold them about 15 years ago. He said that there had been a barn fire in 1985, and that it had been rebuilt on the farm. He said that he brought up many of these points because of his concern about the potential for damage to his farm.

Supporters – Mr. Don Hahn, a resident on an adjoining property, was also present to speak to this request, and identified the location of his property on the aerial photograph. He said that the property had runoff that would be impacted from the new building. He said that the water runoff had been controlled in the past, coming off this farm. He did not agree with Mr. Lloyd that there would be a great drainage impact from the proposed use.

Ms. Joyce Hahn was also present to speak to this request. She clarified that the subject property was not just another 10-acre tract in this area, but was about 20 acres in size. She felt that they had more reason to request this type of use than the owners of the 10-acre lots in Bel-Mar.

Appellants' Presentation – Mrs. Sarah Reilly and Mr. Sean Reilly were present to speak to their appeal. Mrs. Reilly said that they bought the property "as-is," and had made no other improvements since their purchase. They were hoping to construct the riding arena, as proposed, and noted that the water runoff from their new building would have to flow uphill to reach Mr. Lloyd's property.

Mr. Reilly thought that the staff should report to the Board on their findings, based upon their site inspections. He thought that they might be able to describe the hills in the area, and the drainage of the water flow. Mrs. Reilly said that there would be no additional stalls for horses, no additional parking areas for vehicles, and no additional boarding of horses on their farm. She said that there would be no new bathroom facilities in the new structure, as it is intended strictly for riding.

Mr. Reilly said that they need an area to train horses in the winter months. This shelter would prevent the

ground from freezing during those months, which is problematic for their use. He said that theirs was a small business, and that he and Mrs. Reilly enjoy it greatly.

Discussion – Chairman Stout asked if the septic facilities had been planned. Mr. Reilly said that the leach field was located next to the barn. Mrs. Reilly responded that there was a septic field for the house on the property, and a separate one for the barn and its upstairs apartment. Chairman Stout asked if there would be any changes required because of the new building. Mr. Reilly replied in the negative.

Mr. Reilly said that they need to train their horses in the winter months, and this proposed structure would allow them to do this. There was an existing area of sand near the existing barn, and this new structure would be in one of the paddocks next to that outdoor riding area. Mrs. Reilly said that it will look much like the existing barn on their property.

Mr. Glover said that the staff recommended a storm water management plan be implemented. He asked what this would entail with this application. Mr. Reilly said that he thought that it would be a result of Mr. Lloyd's comments, and that they must control the rainwater in the sand riding area, as they can not afford to let that area become degraded.

Chairman Stout asked the staff if they were confident that such a plan could be put together for the subject property. Mr. Marx replied that the staff was confident of such, and said that both he and Mr. Saylor from the Division of Engineering had visited the subject site. He said that water drainage could be controlled at this location.

Chairman Stout said that the staff had recommended approval of this use with four conditions. He asked the appellants if they agreed with the recommendation, and would they agree to abide by the recommended conditions. Mr. & Mrs. Reilly both replied in the affirmative.

Mr. Griggs asked if the storm water management plan would apply to the entire property, or just for the area of the new building. Mr. Saylor replied that the LFUCG Stormwater Manual treated rural properties differently from those in the Urban Services Area. He said that there are exemptions from properties with impervious surfaces of less than one acre in size. He said that the proposed riding area appears to be about 11,000 square feet in size, which would seem to mean that there would be no detention necessary for this use. He said that the downspouts would be needed to control positive drainage from the site; but that since it is a 30-acre farm, he could not conceive of any insurmountable problem as a result. Mr. Griggs asked if this new use would or would not exacerbate the existing problem described by Mr. Lloyd. Mr. Saylor replied that he did not believe that it would, as there was a hill between the subject site and Crawley Lane, effectively preventing any impact.

Chairman Stout said that the Hahns, as next door neighbors to this use, would have the most to lose from any drainage problems created by the proposed use on the subject site.

Action – A motion was made by Mr. Glover, seconded by Ms. White, and carried unanimously (Stumbo absent) to approve **C-2010-86: SARAH and SEAN REILLY** – an appeal for a conditional use permit for an indoor riding arena in the Agricultural Rural (A-R) zone, on property located at 1210 Bel Mar Lane, in accordance with the staff recommendation and subject to the conditions recommended by the staff.

#### E. Administrative Review

1. **A-2010-90: NCJPM PROPERTIES** - appeals for an administrative review to allow a sign that projects above the roof line and overhangs the building in a Neighborhood Business (B-1) zone, on property located at 1315 W. Main Street (Council District 1).

The Staff Recommended: Disapproval, and that the decision of the Division of Building Inspection be upheld, for the following reasons:

- a. The existing signage has elements that render it appropriately considered as a roof sign and/or as a freestanding sign that overhangs the building, both of which are prohibited by Article 17-5 of the Zoning Ordinance.
- b. Granting the appeal would set a damaging precedent that would significantly change the manner in which signage on or over a roof is regulated in Fayette County, resulting in a clear circumvention of the intent of the Zoning Ordinance.
- c. Numerous options are available for creative and unique signage, of the artistic character desired by the appellant, which would comply with the design, size and height allowances for signage within the Neighborhood Business (B-1) zone.

The Division of Building Inspection will report at the public hearing.

Representation – Mr. Patrick McGee was present representing the appellant. He opined that the proposed sign met the current Sign Regulations and the community's recent efforts to promote more artistic and aesthetically pleasing signs. He read from the "Intent" section of Article 17-1 of the Zoning Ordinance that states that it should provide standards for signs while not detracting from the overall aesthetics of the community. He said that property values are also not to be impacted, according to the intent of the Sign Regulations.

Mr. McGee said that their neighbor had provided a letter to the Board in favor of his appeal. He said that another letter of support had also been provided by the Councilmember for this area. He said that another letter from Mr. Jim Clark of LexArts had also been received for this proposal, which he distributed to the Board at this time.

Mr. Griggs asked Mr. McGee if he had installed this sign with an approved permit. Mr. McGee replied that he had not obtained a permit for this sign. Mr. Griggs asked for an explanation, knowing that he was a contractor. Mr. McGee replied that this was done due to his own ignorance. He said he made no intention to hide the sign, and the property is prominently located on West Main Street. He said that typically, he constructed buildings and not signs; and he knew about building permits, but not about sign permits. He said that, in his experience, signs were included as part of the plans that were submitted to obtain a building permit, and he thought that a building permit covered the approval for the signs as well. He said that he was somewhat embarrassed to admit this, but he now understands that basically, there is a permit required "for everything." Mr. Griggs complimented his honesty.

Mr. McGee displayed a few photographs of the sign in question on the overhead projector. He said that the arches had been permitted for construction by the LFUCG, with a building permit, but that the installation of the letters on them had not. He felt that the overall intent of the Article 17 restrictions was not violated with this installation. He said that his sign was intended to promote artistic expression in the manner recommended by the Zoning Ordinance. He referred to Mr. Clark's letter which said as much.

Mr. McGee said that he hoped that, in its review, the Board could make the same findings as Mr. Clark regarding this sign.

Citizen Comment – Councilmember Dianne Lawless was present in support of this appeal. She said that if it were true that the installed letters were the issue with this appeal, then she had an item for the Board to review. She displayed a framed print of an individual human form comprised from various letter texts. She circulated this print for viewing by the Board members and by the staff.

Questions – Chairman Stout asked Mr. McGee what business he was in, and Mr. McGee replied that he was a general contractor.

Mr. Glover asked about the purpose of these metal arches and the sign. Mr. McGee replied that it was strictly to be artistic. He said that he accompanied many local citizens on the most recent Chamber of Commerce trip, and that his staff architect was inspired to create this artwork out of their need for a sign on this building. He then allowed the architect to "implement his vision" for the sign.

Mr. McGee said that there really were just two issues with this appeal. The first is that there was no sign permit. Secondly, he said that there was an inability to "fit" this sign into a standard box. He could not believe that, as much as he had become involved in the community, including Infill & Redevelopment efforts and several local artistic boards, that this type of sign is not desired locally. He said that he had since received numerous complements on its installation. He said whether one cares for the sign or not, one of the purposes of art is to provoke thought, which this sign accomplishes.

Chairman Stout stated that while he understood the artistic aspect of this sign, he was worried about the desires of area businesses to request similar signage if this were to be approved. Mr. McGee said that the sign still needed to be painted, but that they stopped work on it when they learned that they were in violation. Chairman Stout said that he felt that Mr. McGee should have "checked downtown" before proceeding with this installation. He was not sure as to how the staff could approve this type of sign, or how someone could have expected them to do so.

Mr. Glover asked if this sign were found to be "art", if it could be found not to be in violation. Mr. Marx said that there had been cases in the past involving signs that had been determined to be works of art, but none

involved letters that spelled "Churchill McGee" or any other similar business name. That was the difficulty in this instance, when the art also included the specific name of the business.

Mr. McGee repeated that the sign could not be "put into a box." He said that the intent of the Sign Regulations was to add property value and aesthetically pleasing signs, which this sign met on both counts. He repeated that they had met the intent of the Sign Regulations.

Mr. Griggs said that he interpreted the Staff Report to caution against the precedent this type of sign installation would hold. He agreed with that assessment, and that many in town could "blast" their name on different signs in the name of being artistic, regardless of the size. He suggested that Mr. McGee take this sign to either the Planning Commission or to the Planning staff for a review or for a text amendment. He said that he agreed that the Sign Ordinance can be burdensome and difficult, but he thought that would be the best avenue for this to be addressed. Mr. McGee replied that he was hoping that there would be more types of signs like this, and that an answer of "how can we" could be provided rather than "just tear it down." Mr. Griggs thought that some contemporary adaptation to the Sign Ordinance would be in order. Mr. McGee said that the Sign Ordinance was just updated last March to do so. Mr. Sallee responded that several changes were made for signs, primarily in the B-1 zone. Mr. McGee said that they met the intent of those changes, and Mr. Sallee agreed.

Mr. Griggs asked Mr. McGee if he could work with the staff over the next month to allow this sign to be approved without the fear of a detrimental precedent. Mr. McGee replied that he was all for that, and wished to move forward. Chairman Stout was not sure how that could be done. Mr. Griggs thought that it would be arbitrary for this sign to be approved by the Board, but that it was possible for Mr. McGee to work with the staff to avoid such an occurrence. Mr. Glover said that approval of this sign would mean that there would be art all over town. Mr. McGee said that he would welcome that result.

Mr. Marx said that there is an option that the letters could be removed from the structure, and that a freestanding sign be erected in its place. He said that while many may feel constrained by the Sign Regulations, it was not a constraining ordinance, and that freestanding signs could be of any shape, so long as it would not exceed 20' in height in the B-1 zone. He said that there was much creativity possible under the current rules.

Chairman Stout agreed with this assessment. He asked if the sign could be erected from the ground. Mr. Marx thought that this was possible. Chairman Stout asked Mr. McGee if this could be done, and Mr. McGee replied that it could not be engineered. Mr. Marx responded that another sign structure could be erected at this location. Chairman Stout thought that the letters could easily be removed from the existing structure.

Mr. Glover suggested a 30-day continuance of this appeal to allow further discussions between the staff and the appellant. Ms. Meyer said that she, too, thought that a continuance would be a good idea. Mr. Marx said that the staff would be willing to give it a try.

Chairman Stout said that he thought that the staff made the correct interpretation of this appeal; however, if it was possible for this to be resolved, he thought that the staff would work with the appellant. He did not want to see the Board be arbitrary in approving this sign. Ms. Meyer agreed, and said that she did not see how the Board could possibly approve this request.

Mr. McGee asked how leaving this appeal on the Board's docket would be of benefit to him. Chairman Stout replied that by leaving it on the docket, that the sign could remain in place while this appeal was still pending, perhaps while another sign could be designed. Mr. Glover thought that the opportunity to make this sign comply with the Ordinance was still possible. Mr. Marx said that there would be a time penalty to the appellant if the Board denied this request. Ms. Moore reminded Mr. McGee that he could also withdraw his appeal at any time. Mr. McGee said that he would agree to a continuance of his appeal.

Action – A motion was made by Ms. Moore, seconded by Mr. Griggs and carried unanimously (Stumbo absent) to continue **A-2010-90: NCJPM PROPERTIES** for 30 days to the Board's October meeting.

Chairman Stout thanked Mr. McGee for his consideration.

2. **A-2010-94: CLAYS MILL CONGREGATION OF JEHOVAH'S WITNESSES** - appeals for an administrative review to allow construction trailers and related temporary structures on site during construction of a new church facility in a Single Family Residential (R-1A) zone, on property located at 1324 Viley Road (Council District 11).

Division of Building Inspection Report – Mr. Hume reported that his office had been approached by the appellant with an unusual request in the construction of this church. He asked that the Church first present their appeal, and then he would explain to the Board Building Inspection's problem with their request.

Appellant's Presentation – Mr. Herschel Myrick was present representing the appellant. Mr. Myrick said that he was here representing the Kentucky Regional Building Committee of Jehovah's Witnesses. He said that the Clays Mill Congregation of Jehovah's Witnesses was in the process of constructing a Kingdom Hall at the 1324 Viley Road location. They are nearing completion of the associated site work necessary for that construction. He said that they rely upon volunteers from across the state in constructing their churches, and various professionals in the construction trades are assembled for this work.

Mr. Myrick said that, ordinarily, they complete construction in two four-day time periods. To accomplish this with volunteer labor, there is a need for a lot of support. They have a number of persons ready for this purpose, and they operate out of a number of construction trailers on the construction site. This had been their plan for this location as well, until they were denied permission by the Building Inspector to do so.

Mr. Myrick said that on August 25, 2010, they applied for a tent permit to allow their volunteers to sit out of inclement weather and enjoy their meals, and then learned that only one construction trailer would be permitted on this site. To their knowledge, there are no zoning laws prohibiting them from having more than one construction trailer onsite, but they did recognize the Building Inspector's ability to interpret the Zoning Ordinance provisions. Their decision to limit the church to one construction trailer did create an injurious and aggrieved condition for the church and their construction process. This would create an undue hardship to the church, as they would not be able to carry out their construction in their allotted timeframe. They would also not be able to support their volunteer labor over the four weekends they had scheduled for the completion of this Kingdom Hall. This would result in the church having to hire contractors and expend additional funds to construct the church.

Mr. Myrick said that they are well known for their timely construction projects, and that the Board might be familiar with their other two local construction projects—on Paris Pike at Kingston Road in the mid 1990s and on Custer Drive near Man o' War Boulevard in 2005. They used the same approach for that work.

Mr. Myrick presented some photographs of their most recent construction project in May, in a residential neighborhood near Danville, Kentucky. He said that most of their projects are located in residential areas, rather than in commercial or industrial portions of a community. He displayed the photos for the Board members, and said that the site was rather "tight" and involved several construction trailers on that one-acre location near Danville. He said that, with this arrangement, they were able to manage the construction very well. Another photograph he displayed showed the construction site in relation to the surrounding subdivision. He said that this was their 134<sup>th</sup> such construction project since 1982. He said that they are often "in and out" of a neighborhood before they are even noticed by neighbors. Letters were sent to residents in the Shelby Greene Subdivision from the Danville congregation well in advance of that construction activity.

Mr. Myrick said that he had letters to share from several local officials near Danville about their recent construction activities. The Boyle County Building Inspector said in his letter that he provided inspections on May 10 and May 27 of their work, and actually lived in the adjacent subdivision. Mr. Myrick read from his letter that he was complementary of that construction project, including the landscaping provided and the organization of the site construction activities. Mr. Myrick also submitted a letter from the Mayor of Junction City, Kentucky, which was complementary of the notice given to Shelby Greene Subdivision and of the work by that congregation. Both letters were entered into the record.

Mr. Myrick said that their process was designed to allow smooth construction activities, but only after giving proper notice to neighbors. He said that they had already provided such a notice to the residents in the area of Viley Road, as that is an important part of their normal procedure. They like to prepare neighbors for the fast construction activities that are planned. He said that they were not aware of any complaints over the past six months of their site work on Viley Road. This project was somewhat larger than most, so they had decided to stretch out this activity over four weekends, rather than the standard two-weekend timeline. They had scheduled construction for this Kingdom Hall for the second and third weekends of October and November, with two weeks off in between.

Mr. Myrick said that the trailers are proposed to occupy this site for about six weeks. He asked the Board to compare this to the usual construction activity of a facility of this size. He also asked the Board to consider approval of their proposed construction and the trailers necessary to do so.

Division of Building Inspection Report (cont.) – Mr. Hume said that he did not believe that there were no complaints from neighbors about this construction activity. He said that one neighbor had complained several times to his office about this project, especially over drainage issues. Mr. Myrick replied that he had said that there were no complaints, to his knowledge, about the physical construction currently ongoing at this location.

Mr. Hume said that the proposed site plan also showed trailers for laundry uses, food preparation, for a residence, and a large number of portable toilets. He said that the church was exceeding the norm for a construction project of this size, as laundry services and food service was not part of a typical construction project. Mr. Myrick said that they will not house anyone, but they do propose two security guards at this location, and they would be in the trailers in case anyone comes onsite, or in case of any vandalism.

Mr. Myrick said that there was some confusion about the laundry service mentioned by Mr. Hume. He said that no such service was proposed. He said that there was food preparation proposed to feed the volunteer construction workers, if they are to carry out construction work, including three trailers to provide the necessary oversight for the activity. One of the trailers is to be for “check-ins” for the volunteers. He displayed the site plan on the overhead projector, and said that there was a “support zone” proposed on the site and a “construction zone” as well. In the construction zone, there are strict protocols to promote safety for all the workers. He said that their site is a bit over two acres in size, and that access to the site will be controlled for all visitors. They also proposed a tent for use by volunteers for meals. The portable toilets are to be pumped out every day, to promote truly sanitary facilities.

Questions – Ms. Meyer asked where the volunteers will park their vehicles. Mr. Myrick replied that the workers will be shuttled back and forth to various commercial parking lots where they have agreements for the workers to park during those times. The majority of the automobiles on this site will be only for construction supervisors.

Chairman Stout asked Mr. Hume if their concerns hinged upon the vehicular parking proposed. Mr. Hume replied that it was primarily due to the large number of trailers proposed for such a small construction job, especially the food services proposed. Mr. Myrick said that he understood their concern, but that their proposal was not that unusual, as the Cardinal Hill Hospital site had about 15 construction trailers in use at the present time. He said that they will be in and out in a comparatively short amount of time.

Mr. Griggs asked Mr. Hume what the downside of approving these trailers would be. Mr. Hume said that the large number of volunteers would not be a problem, but that the food service to support them over a short period of time would. Mr. Griggs said that this church’s projects do not fit the norm.

Mr. Myrick said that they have 105 regional building committees that all construct churches in this manner in many different states and in the Caribbean. He said that most communities appreciate the means by which they can complete their projects in such an efficient manner.

Action – A motion was made by Ms. Meyer to approve **A-2010-94: CLAYS MILL CONGREGATION OF JEHOVAH’S WITNESSES** – an appeal for an administrative review to allow construction trailers and related temporary structures on site during construction of a new church facility in a Single Family Residential (R-1A) zone, on property located at 1324 Viley Road, for the following reasons:

#### **FINDINGS FOR APPROVAL**

1. Refusal of this request would cause an undue hardship to limit the number of trailers and cause the congregation to not be able to complete their building on a time necessary for utilizing volunteer labor, and at a cost of having to turn to contractors. A traditional approach for the church would cause an undue hardship since they have completed 134 projects of this nature already.
2. The build will not adversely affect the subject or surrounding properties because of the short time required for the construction and because of the temporary nature of the trailers.

Ms. White seconded the motion, and it passed unanimously (Stumbo absent).

IV. **BOARD ITEMS** - The Chair announced that any items a Board member wished to present would be heard at this time. There were no such items.

V. **STAFF ITEMS** - The Chair announced that any item a Staff member wished to present would be heard at this time.

A. **HB 55 Training Opportunity** – Mr. Sallee announced that there would be an APA audio conference on Wednesday,

October 13, beginning at 4:00 p.m. in the Division of Planning (Phoenix Building, 7<sup>th</sup> floor) conference room. The title of this audio conference was "Planning for Signs & Billboards in a Digital Age," and would count toward 1.5 hours of training credit for Board of Adjustment and Planning Commission members.

VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be October 29, 2010.

VII. **ADJOURNMENT** – Since there was no further business, the Chair declared the meeting adjourned at 3:48 p.m.

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Louis Stout, Chair

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James Griggs, Secretary